

Responses to the State Department's 10/21/2013, Attachment 1 Questions

Question No. 1: Independent Utility: You have indicated that the Bakken North Pipeline has independent utility beyond its connection to the Poplar/Wascana Pipeline. However, your pre-construction notification to the Army Corps of Engineers in North Dakota dated October 26, 2011 and notification to the Army Corps of Engineers in Montana dated February 7, 2012 both indicate "Plains All-American Pipeline, LP (PAA) proposes to construct an approximate 12-inch-diameter crude oil pipeline connecting the proposed Trenton Station Expansion, located northeast of Trenton, North Dakota, to the Plains Wascana Pipeline, located near Outlook, Montana." Did Plains Pipeline, L.P. subsequently inform the Army Corps of Engineers in both North Dakota and Montana of an alternative use for the Bakken North Pipeline other than connecting to the Poplar/Wascana Pipeline?

RESPONSE:

Plains presumes this inquiry concerning the "independent utility" of the Bakken North Pipeline relates to the scope of any analysis by the State Department under the National Environmental Policy Act (NEPA) for issuance of a Presidential Permit for the existing Poplar Pipeline to a different Plains entity. Here, the relevant federal action for purposes of NEPA is the State Department's issuance of a Presidential Permit, pursuant to Public Notice 5092 (Name Change Permit), reflecting the transfer of ownership of the border-crossing segment of the Poplar Pipeline. Under NEPA, the relevant question is whether the construction of the Bakken North Pipeline and its interconnection with the Poplar Pipeline has a utility independent from the State Department's action pursuant to Public Notice 5092, the issuance of a Name Change Permit reflecting the asset transfer.

Bakken North has utility independent of any action by the State Department on Plains' application for a Name Change Permit to reflect the asset transfer. Issuance of a Name Change Permit to recognize the asset transfer and construction and interconnection of the Bakken North Pipeline would each occur with or without the other action. First, even if Bakken North were never constructed or operated, Plains would seek a Name Change Permit reflecting the transfer of these assets. Second, Plains' construction of Bakken North and its interconnection with the Poplar Pipeline could occur regardless of whether the State Department issues a Name Change Permit to Plains for the Poplar Pipeline border crossing. The current permit was issued in the name of two Plains affiliates, PMC (Nova Scotia) Company and Plains Marketing Canada L.P., and, but for an internal corporate restructuring, no State Department action would be necessary as no Name Change Permit would be needed. The entities holding the existing permit could have interconnected the Bakken North with the Poplar Pipeline and transported crude oil between the United States and Canada as authorized under the current permit (notably, Article 9 would not be triggered). Bakken North has a utility separate and independent from the Name Change Permit issuance because construction and interconnection could occur regardless of whether the Poplar border-crossing facility and permit are held by Plains or by its two affiliates.

Question No. 2: Plains Pipeline, L.P.'s Application for Certificate of Corridor Compatibility to the North Dakota Public Service Commission dated August 2011 states on page 2 that "The Project would provide crude oil transportation service from Trenton, North Dakota to the

Wascana Pipeline, located near Outlook, Montana. From there, the Wascana Pipeline will transport the crude oil to Regina, Saskatchewan.” Page 3 of the Findings of Fact, Conclusions of Law and Order of the North Dakota Public Service Commission, dated February 1, 2012, states that “The Project will consist of an underground crude oil pipeline approximately 79 miles long that extends from the Plains Pipeline Trenton Station near Trenton, North Dakota, to an interconnection point with the existing Wascana Pipeline approximately 2.5 miles north of the town of Outlook in Sheridan County, Montana.” These findings resulted in North Dakota Route Permit Number 136 dated February 1, 2012. Did Plains Pipeline, L.P. subsequently inform the North Dakota Public Service Commission of an alternative use for the Bakken North Pipeline other than connecting to the Poplar/Wascana Pipeline?

RESPONSE:

See the response to Question No. 1 above.

Question No. 3: Cumulative Effects Analysis: In the Bureau of Indian Affairs’ checklist for categorical exclusion exceptions dated 9/20/11, item number 6 (“This action has a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects”) was checked “no.” Please provide the cumulative effects analysis performed on the Bakken North Pipeline that was the basis of this response.

RESPONSE:

Plains previously provided to the State Department a December 2011 report entitled “Categorical Exclusion with Pertinent Analysis Documentation.” Plains’ consultant submitted this report to the Bureau of Indian Affairs for proposed directional drilling beneath the Doris Meyer Plante property in Sheridan County, Montana. Plains is not in possession of any additional cumulative effects analysis documents the Bureau of Indian Affairs may have used or generated as part of its completion of the categorical exclusion checklist.

Question No. 4: Pipeline and Hazardous Materials Safety Administration: Please provide any correspondence and/or information from the Pipeline and Hazardous Materials Safety Administration (PHMSA) that pertain to operating either the Poplar Pipeline or the Bakken North Pipeline. Please provide emergency response plans (as required by Condition Number 25, page 6, of the North Dakota Public Service Commission’s Findings of Fact, Conclusions of Law and Order) for the Bakken North. Please also provide the emergency response plan for the Poplar/Wascana pipeline.

RESPONSE:

PHMSA and Plains corresponded frequently by e-mail regarding coordination for Bakken North construction and inspections. Attachment A contains relevant e-mail communications between PHMSA and Plains. PHMSA and Plains have not had occasion to correspond specifically regarding the Poplar Pipeline.

Plains’ emergency response plan for the Bakken North and Poplar Pipelines is contained within Plains’ Spill Response Plan for the Belfield Pipeline System Zone. Attachment B contains this plan.

Question No. 5: Army Corps of Engineers Permit: You indicated on September 6, 2013 that Ms. Stephanie McCrary of the Army Corps of Engineers conducted the consultations with the Montana State Historic Preservation Officer (SHPO) and that you were not provided with copies of this correspondence. Ms. McCrary is no longer with the Army Corps of Engineers and the Department has been unsuccessful in obtaining this correspondence. If you have a secondary point of contact with the Army Corps of Engineers, please provide the contact information. If your consultant was in contact with the Montana SHPO, please provide copies of the correspondence.

RESPONSE:

Attachment C contains three documents responsive to this request:

- On February 13, 2012, Plains' consultant sent the Montana SHPO the cultural resource inventory report for the Bakken North Pipeline.
- On March 23, 2012, the Montana SHPO responded to Plains' consultant agreeing with Plains' methods, findings, and recommendations, but declining to make formal comment on eligibility or effect in the absence of an agency nexus.
- On April 9, 2012, the Corps of Engineers sent the cultural resource inventory report to the Montana SHPO noting its determination that Plains' undertaking would have no effect on historic properties and inviting the Montana SHPO to provide comments. On April 25, 2012, the Montana SHPO representative concurred, as evidenced by a stamp and signature on the Corps' letter.

Question No. 6: Consultations, Biology Report, Cultural Resources Report: Please provide Appendices C (Consultations), D (Biology Report), and E (Cultural Resources Report) to the North Dakota Public Service Commission Applications. (This information could have been in the ftp file that we could not open.) Please confirm the date(s) your consultant was in the field for the biological survey(s) conducted in North Dakota and Montana.

RESPONSE:

Plains' application to the North Dakota Public Service Commission for a Certificate of Corridor Compatibility included the requested Consultations, Biology Report, and Cultural Resources Report appendices. This document, named "PAA Bakken North PSC Application.pdf," was contained within each of the document sets Plains sent to the State Department on or about August 22, August 30, and September 11, 2013. The requested appendices are available at pages 100 through 349 of the PDF file. Plains also provided the appendices on a CD sent via Federal Express to the State Department on November 26, 2013, and at a secure FTP site provided to Mr. Michael Brennan by e-mail on November 27, 2013. These appendices are privileged and confidential, and Plains is providing them in a separately bound Attachment D.

As discussed during the November 7, 2013, meeting between Plains and the State Department, Plains' natural resource field surveys were conducted on April 18-23, May 24-27,

May 31-June 3, June 14-16, August 16-19, September 28-30, October 20, and October 25, 2011. These dates are documented in several natural resources and wetlands delineation reports and addenda Plains previously provided to the State Department.

Question No. 7: Endangered Species Act and Migratory Bird Treaty Act: You indicated on September 6, 2013 that your consultant sent three letters to the U.S. Fish and Wildlife Service (USFWS) regarding the Bakken North Pipeline. You also indicated you had provided those letters to the Department. We have only one letter dated May 25, 2011 to USFWS in Bismarck, North Dakota in our possession. Please provide the additional two letters.

RESPONSE:

Plains' consultant sent one letter, the May 25, 2011, letter referenced above. As we discussed during the November 7 meeting, the reference to *three* may have been to the number of attachments included with the original letter. On September 11, 2013, Plains provided the May 25, 2011, letter and its three attachments, as well as a memorandum from Plains' consultant regarding outreach to the U.S. Fish and Wildlife Service.

Question No. 8: The Department is unable to locate any correspondence regarding compliance with the Endangered Species Act (ESA) or the Migratory Bird Treaty Act (MBTA) that refers to the project activities in Montana. If the North Dakota Fish and Wildlife Service acted on behalf of Montana, please provide documentation to that effect.

RESPONSE:

Compliance with the ESA's consultation requirements for work completed in Montana was conducted by the Bureau of Indian Affairs and the U.S. Army Corps of Engineers. The Bureau of Indian Affairs made a "no effect" determination as part of its issuance of a categorical exclusion for pipeline work at the Doris Meyer Plante property. As part of the pre-construction notification for water-crossings in Montana, Plains' consultant recommended a "may affect, not likely to adversely affect" determination, which would have triggered informal consultation under the ESA. However, the Corps of Engineers made a "no effect" determination provided that Plains adhered to six special conditions identified in the Corps of Engineers' authorization. Plains previously provided these documents to the State Department.

Plains' consultant contacted the Corps of Engineers on November 15, 2013, to inquire further about the Corps of Engineers' Section 7 consultation process in Montana. The Corps of Engineers confirmed our understanding of the Corps of Engineers' "no effect" determination. We provide this e-mail in Attachment E. It is our understanding that all communications with the U.S. Fish and Wildlife Service concerning ESA Section 7 consultations were conducted by the Bureau of Indian Affairs and the Corps of Engineers, and any ESA-related conditions were incorporated into the Bureau of Indian Affairs' and Corps of Engineers' authorizations.

As we discussed during our November 7 meeting, the MBTA does not impose an obligation to consult with any agencies regarding compliance with the MBTA, and Plains is not in possession of any correspondence specifically regarding such compliance beyond those discussed in response to Question No. 7 above. However, Plains' compliance with the MBTA is addressed in the response to Question No. 9 below.

Question No. 9: Your application to the North Dakota Army Corps of Engineers (ND Corps) indicated that the survey area included suitable foraging and stopover habitat for the whooping crane, and that the whooping crane, piping plover, and the least tern have the potential to occur in the area. As you acknowledged in your letter to the FWS dated May 25, 2011, and in your August 2011 applications for Corridor Compatibility and Route Permit to the North Dakota Public Service Commission, the whooping crane, piping plover, and the least tern are all covered under both the ESA and the MBTA. Additionally, your ecologists observed sprague's pipit (an ESA candidate species and also covered under the MBTA), as well as suitable habitat for sprague's pipit within the project area. The effect of construction on these species and the mitigation of any effects are unclear from the Plains Pipeline, L.P.'s permit applications pertaining to the MBTA:

Letter to FWS dated May 25, 2011: "Plains proposes to initiate construction on or about August 22, 2011 and maintain an active construction site through pipeline commissioning and final restoration which is anticipated to occur immediately after pipeline commissioning. The proposed schedule would avoid the breeding season [February 1 through July 15] and migrants returning to the area would encounter a restored pipeline right of way in 2012."

The Application for Certificate of Corridor Compatibility to the North Dakota Public Service Commission dated August 2011, page 13: "In North Dakota, it is generally acknowledged that Migratory Bird Treaty Act species of concern may be present in North Dakota from February 1 through July 15 annually. Hence MBTA mitigation may be required if construction takes place during this timeframe. The current project schedule suggests that this may be the case."

The Application for Route Permit to the North Dakota Public Service Commission dated August 2011, page 28: "Migratory Bird Treaty Act: Consultations [with USFWS] regarding the Migratory Bird Treaty Act are ongoing. Plains will continue to engage the USFWS to complete consultations in this regard."

The applications to the North Dakota Public Service Commission indicate construction did not start in August, as Plains Pipeline, L.P. indicated in its letter to the Fish and Wildlife Service. When did construction begin and end? What, if any, mitigation measures did Plains Pipeline, L.P. undertake? Please provide documentation of the ongoing consultations with USFWS referred to in the applications to the North Dakota Public Service Commission.

RESPONSE:

Plains commenced construction on the Bakken North Pipeline on May 21, 2012, and construction was substantially completed in late December 2012. The portion of the construction period from May 21 through July 15, 2012, overlapped with the February 1 through July 15 breeding period when ESA-listed and MBTA species may be present in the construction area. Plains mitigated any effects to these species by undertaking the following activities. First, Plains

mowed and cleared the pipeline right-of-way between October 31 and November 5, 2011, which reduced the potential that any take would occur during the subsequent construction period. Second, Plains employed Pam Bennett, a qualified environmental inspector who monitored daily construction activities to ensure compliance with all environmental permits, including take prohibitions under the ESA and the MBTA.

Coordination with the U.S. Fish and Wildlife Service is described in those documents identified in response to Question No. 7 above.

Question No. 10: Environmental Monitor: Condition Number 23 “Measures to Minimize Impact, page 6, of the North Dakota Public Service Commission Findings of Fact and Conclusions of Law and Order” dated February 1, 2012 states that Plains Pipeline, L.P. “will utilize environmental monitors and inspectors to comply with all applicable permits” during construction of the Bakken North Pipeline. Please provide contact information for the monitor(s) and/or inspector(s).

RESPONSE:

Plains contracted with On & Offshore Quality Control Specialists (OOQCS) for environmental monitoring and inspection services. Two different inspectors performed these services at different times during the early and mid-construction periods. In October 2012, a third OOQCS Chief Inspector and Lead Environmental Inspector, Pam Bennett, took over the role previously performed by such inspectors, and provided monitoring and inspection services for the duration of the Bakken North project. Ms. Bennett has sixteen years’ experience monitoring and inspecting linear projects and remains an employee of OOQCS.

Attachment A: E-mail Correspondence with PHMSA

Sent Date	Subject Line / Attachment Filename
2012.04.12	RE Rocky Mountain Pipeline System Inspections
2012.05.16	RE Plains Pipeline Bakken North Pipeline Construction
2012.05.17	RE Plains Pipeline Bakken North Pipeline Construction
2012.05.29	RE Bakken North Pipeline Construction (12)
2012.05.29	RE Construction audits
2012.05.30	PHMSA construction audit
2012.05.31	Inspection Schedule
2012.06.04	RE 5DDB-Itinerary Only For FINCH THOMAS W 061812
2012.06.04	RE Inspection form
	Attachment: 195 construction field form2012.xlsx
	Attachment: PHMSA_Form_7_Construction_Liquid_Pipeline_2011.doc
2012.06.26	FW Baken North PHMSA audit
	Attachment: Copy of Record of External Inspection or Audit.xls
2012.07.19	RE Construction Inspection near Plentywood MT Aug. 13th - 17th - FW Microtel Hotels Confirmed Reservation Notification
2012.08.22	Re Spy 725 Demo
2012.09.27	Plains Pipeline - Bakken North
2012.10.11	RE Bakken North final construction inspection
2012.10.23	RE Plains Pipeline - Bakken North
2012.10.24	RE Western Region's last Bakken North Construction Insp
2012.11.07	RE Bakken North Const. Insp. week of 111312
2012.12.17	RE Plains Pipeline - Bakken North
2013.02.07	RE Plains Pipeline - Bakken North Pipeline Mainline Hydotest Reports - correction sheets
2013.04.01	RE 2013 Central Region PHMSA Inspection - Plains Pipeline Bakken North
2013.04.08	Bakken North 12 Line
2013.04.08	RE 2013 Central Region PHMSA Inspection - Plains Pipeline Bakken North
	Attachment: Bakken North - Plains.doc
	Attachment: Breakout Tank Data Form.doc
2013.04.23	RE 2013 Central Region PHMSA Inspection - Plains Pipeline Bakken North

Attachment B: Spill Response Plan for the Belfield Pipeline System Zone

1. Belfield Response Zone Plan.pdf

Attachment C: Corps of Engineers and Montana SHPO Correspondence

1. Cover Letter to MT SHPO with Class III report_Signed.pdf (February 13, 2012 cover letter to the Montana SHPO transmitting a Class I and Class III Cultural Resource Inventory of the Bakken North Pipeline, Sheridan County, Montana).
2. Plains Pipeline_03.23.2012.pdf (March 23, 2012, response from the Montana SHPO).
3. MT SHPO and COE Concurrence Letter_2.9.2012.pdf (April 9, 2012, cover letter from the Corps of Engineers to the Montana SHPO with the Montana SHPO's concurrence dated April 25, 2012).

Attachment D: Consultations, Biology Report, and Cultural Resources Report Appendices
PRIVILEGED AND CONFIDENTIAL – DO NOT RELEASE

1. ND PSC Appendix C.pdf (Appendix C – Consultations)
2. ND PSC Appendix D.pdf (Appendix D – Natural Resource Report)
3. ND PSC Appendix E.pdf (Appendix E – Cultural Resource Report)

Attachment E: Corps of Engineers' "No Effect" ESA Determination for Montana

1. Email from Todd Tillinger (USACE) regarding ESA compliance_11.15.2013.pdf